IN THE HIGH COURT OF UTTARANCHAL,
AT NAINITAL.
First Appeal No. 364/2001
(Old No. 170/1996))

Kharak Singh S/o Chandra Singh,
R/o Village Dhansani, Patti Vasar, District
Tehri Garhwal .....Appellant.

Vs.

1. Zila Parishad Tehri Garhwal through
   President Zila Parishad, Tehri.
2. Charan Singh Rana Upper Mukhya Adhikari
   Zila Parishad, Tehri.
3. Ghambhir Singh Rana, Abhiyanta
   Zila Parishad, Tehri Garhwal ..Respondents.

Sri B.P.S. Mer, holding brief for Sri V.B.S. Negi, Advocate for the appellants.
Sri N.S. Pundir, learned counsel for the respondents.

(Hon'ble B.C. Kandpal, J.)

This appeal has been preferred by the plaintiff against the judgment and decree dated 21-12-95, passed by District Judge, Tehri Garhwal in O.S. No. 3 of 1993, Kharak Singh Vs. Zila Parishad and others.

2- The facts giving rise to this appeal, in brief, are that the defendant Zila Parishad invited tender for construction of the building of Junior High School, Chokhtidhar on 19-9-90. The tender of plaintiff/appellant being lowest, was accepted and agreement was executed for the aforesaid work, the cost of which was Rs. 1,79,900/-. On 2.10.90, the plaintiff also deposited Rs. 18,000/- as security. The plaintiff could not complete the contract work and time was extended upto 28-11-1991. It is alleged that the construction of the building was raised upto the ceiling and in the intervening night of 19/20.10.1991 there occurred an earthquake and the construction was damaged and it became impossible for the plaintiff to execute the contract, therefore the contract became void. The plaintiff informed the defendants and

requested to make payment of the work carried out by him. The defendants informed him that they are not liable for damage caused by the earthquake and threatened him to forfeit his security. According to the plaintiff the Junior Engineer of the defendants measured the work carried by the plaintiff on 1.10.1991 for Rs. 71,000/- only though he performed the work of Rs. 1,00,000/-. It was alleged that the payment of aforesaid measurement of the work was made to the plaintiff after a deduction of 10% as security amount and income tax etc and the defendants also made payment of Rs. 16,200/- after the earthquake. The J.E. again visited the site on 30-10-91 and assessed the cost for reconstruction to the tune of Rs. 2,00,000/- after damage by the earthquake. The defendants orally informed the plaintiff that they have demanded the amount from the Government and reconstruction will be started after receipt of the said budget. The plaintiff was ready and willing to complete the work after the earthquake but the defendants did not ask him to carry out the work. It was also alleged that vide letter dated 27-8-92 the defendant Zila Parishad has forfeited the plaintiff's security amount of Rs. 18,000/-. The plaintiff's case is that he has not committed any breach of the contract and still he is ready to perform the work. The damages caused to the construction was 'Act of God'. The plaintiff further pleaded that he is entitled to get Rs. 18,000/- as security amount; Rs. 7,100/- as 10% deduction made on the payment; Rs. 2000/- as registration amount, Rs. 1300/- as deduction made towards income tax; Rs. 1930/- as 10% deduction on the payment of additional work performed by him on the direction of the defendant; Rs. 392/- as income tax on the said amount and Rs. 20,000/- cost of timber and transportation charges and Rs. 5000/- cost of the cement and other of material, in all Rs. 55,722/-. Hence suit was filed for recovery of the aforesaid amount.

3- The defendants contested the suit by filing written statement. They have admitted the contract work given to the plaintiff. It was also admitted that earthquake had occurred on 20-10-1991. The construction work upto ceiling level was also admitted. The measurement of the work for Rs. 71,551-42 P. was also admitted

by the defendants. The defendants case is that the plaintiff did not complete the work inspite of the repeated requests and the security amount was forfeited for non-completion of the work. It was also alleged that after earthquake the plaintiff did not complete the work hence he was not entitled to get any amount from the defendants. It was also alleged that no damage was caused to the material of the plaintiff. It was also alleged that there was no provision for reassessment of the cost of the work after the earthquake and the action has been taken in accordance with the terms and conditions of the contract and the plaintiff is not entitled to get any relief. The defendants also alleged that the plaintiff did not purchase timber and other material.

4- On the basis of pleadings of the parties, the following issues were framed in the suit:-

1. Whether the theka work was partly executed and then stood annihilated by the earthquake coming in the night between 19/20th October 1991 as alleged in the plaintiff and plaintiff's posture under Order 10 Rule 2 C.P.C.?. If so, whether plaintiff is entitled to any compensation thereof?.
2. Whether plaintiff's theka money has been unreasonably forfeited by the defendant? Its effect?.
3. Whether plaintiff executed any additional work worth Rs. 19,600/- as alleged in the pleadings?. If so, whether he is entitled to any compensation therefore?.
4. Whether plaintiff is entitled to any compensation for the building material left over the site in question in the circumstances pleaded in the plaint and his statement under O. 10 R. 2 C.P.C.? If so, to what amount?.
5. Whether suit against the defendants Nos. 2 and 3 is not maintainable?.
6. Relief, if any?.

5- Thereafter both the parties, in support of their cases, adduced evidence in the case. The trial court after hearing learned counsel for the parties and having perused the material on record, partly decreed the suit for recovery of Rs. 28,400/- with proportionate costs. Interest @10% per annum on Rs. 7100/- from the date of judgment till actual payment.

6- Feeling aggrieved, the plaintiff preferred the appeal before the Allahabad High Court, which has been transferred to this court, after creation of new State.

7- Heard learned counsel for the parties and perused the material available on record.

8- The plaintiff has filed the suit for the recovery of Rs. 55,722/- which include Rs. 18,000/- the security amount deposited by the plaintiff with the defendants; Rs. 7,100/- as 10% deduction made on the payment; Rs. 2000/- as registration amount; Rs. 1300/- as deduction made towards income tax; Rs. 1,930/- as 10% deduction on the payment of additional work performed by the plaintiff on the direction of the defendant; Rs. 392/- as income tax on the said amount; Rs. 20,000/- as cost of timber and transportation charges and Rs. 5,000/- as cost of material including concrete, cement etc.

9- Perusal of the record reveals that the work done by the plaintiff was measured by the J.E. on 13.10.1991 for Rs. 71,551.42. The plaintiff was made running payment of Rs. 27000/- and he was also paid Rs. 16200/- even after the earthquake. Chatar Singh Rana, D.W.1, Upper Mukhya Adhikari, District Board Tehri has deposed that the plaintiff executed the work to the extent of Rs. 71,000/- by 13.10.91 and the said amount was paid to him vide last payment bill, Ext. A.-3 on 13.10.91 without any objection. Therefore the plaintiff did not execute the remaining work. He also deposed that after the earthquake, the plaintiff did not execute the work inspite the notice. This witness also stated that the remaining

work of construction of the building was executed for Rs. 1,43,000/- by the other contractor and in this amount the security etc of the plaintiff is included.

10- As regards the deductions made by the defendants from the plaintiff is concerned, it is admitted case of the parties that the plaintiff constructed the building upto ceiling level and in the night intervening 19/20-10-1991, there had occurred earthquake and damage was caused due to Act of God and it was impossible to perform the contract further. Hence the plaintiff was entitled to get the amount of the work already executed by him and the defendant could not have pressed the plaintiff to do the work afresh without assessment of the damage caused to the work by the earthquake and the defendant was not legally entitled to forfeit the security and registration amount. The defendants witness Chatar Singh, D.W.1 has admitted that Rs. 7100/- as 10% deduction of the last payment was withheld and the said amount has not been paid to the plaintiff. The trial court has concluded that the plaintiff is entitled to recover a sum of Rs. 7100/- as 10% of the amount deducted on the last payment; Rs. 18,000/- as security; Rs. 2000/- as registration amount and Rs. 1300/- as income tax, in all a total sum of Rs. 28,400/-.

11- So far as the cost of timber and transportation charges and cost of cement amounting to Rs. 20,000/- and 5000/- respectively is concerned, the plaintiff has alleged that the material was being used by another contractor at the site. The assertion of the defendants in this regard is that the timber and 8 or 9 bags of cement belonging to other contractor were lying at the site and the plaintiff did not purchase the aforesaid articles, hence he was not entitled to recover any amount in this regard. The trial court held that the plaintiff was not entitled to recover the above amounts from the defendants and rightly so.

12- In view of the aforesaid circumstances of the case, I am of the opinion that the trial court was justified in decreeing the suit for the recovery of Rs. 28,400/- only.

13- The learned counsel for the plaintiff/appellant submitted that the plaintiff should have been awarded interest @10% per annum on the whole decreetal amount and the trial court has committed error in awarding interest on Rs. 7100/- only.

14- The submission of the learned counsel for the appellant has no substance. No amount of interest can be claimed by way of damage. Therefore, the plaintiff is not entitled to recover the interest on the amount of security money, income tax deduction and registration charges. The trial court has awarded interest @ 10% on Rs. 7100/-, the amount deducted from the last payment on 13.10.91 which was held liable to be paid to the plaintiff. This sum of Rs. 7100/- was illegally deducted and withheld by the defendants from the last payment bill of the plaintiff, therefore, the plaintiff was certainly entitled to recover interest on this sum. I do not find any illegality and impropriety in the finding recorded by the trial court on this aspect.

15- For the reasons aforesaid, the appeal lacks merit and is liable to be dismissed.

16- Accordingly the appeal is dismissed. The impugned judgment and decree dated 21-12-1995 is hereby confirmed. No order as to costs.

(B.C. Kandpal, J.)

Dated: 19-12-2006
ISB